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EXAMINER

PADEN, CAROLYN A

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

**MAILED
SEP 24 2007
GROUP 1700**

Application Number: 10/005,702
Filing Date: December 05, 2001
Appellant(s): FABIAN ET AL.

Gerald McGowan, Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 19, 2007 appealing from the Office action mailed March 23, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

JP 10-113145 Naotaka et al 6-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 5-8 & 10-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naotaka (Japanese document 10-113145) referred to as PAJ.

PAJ discloses treating pan-fried seasoning that is added to a wok or a frying pan to season the foods while heating. The product reduces

splashing of fat, oil and moisture during cooking. The composition is a water continuous or an o/w emulsion containing 10-50% fat, 0.03-0.3 wt% emulsifier having an HLB of greater than or equal to 7, a viscosity of 1000-7000 centipoises at 20 C and an average oil drop particle size of less than or equal to 30 um. The selected emulsifiers include glycerol fatty acid ester, monoglyceride, sorbitan fatty acid ester and enzyme decomposition of lecithin (see abstract). In the translation at paragraph 007 of the detailed description, polyglycerol fatty acid ester or sucrose fatty acid ester is a suggested emulsifier, as required in claim 3. 0-10% biopolymer, in the form of an edible gum or starch, is disclosed as an ingredient in paragraph 0020 of the detailed description (translation). Claim 1 appears to differ from the reference in the recitation of the specific Bostwick value of the product but the Bostwick value is known in the art, as disclosed in applicants' specification at page 13, lines 8-9 to be a measure of how pourable the composition is. Since the composition of PAJ is used as a seasoning for pan-frying or stir-frying, one of ordinary skill in the art would have expected it to be pourable. Although DATEM is not one of the specific emulsifiers used in PAJ, no unobvious or unexpected results are seen from the selection of this specific emulsifier because the emulsifiers in PAJ show the

same utility as that described by applicant. It is appreciated that the pH of the composition is not mentioned but the pH range selected is a range typically found in foods.

(10) Response to Argument

Appellant argues that PAJ uses more than 50 wt% oil or fat in his process and that when the product has more than 50% oil, the food is greasy. This argument has been considered but is not persuasive. No unobvious or unexpected difference is seen from the use of more than 50% oil when compared to 50% oil in the PAJ process. The seasoning in PAJ appears to be added to an oily stir fry pan and so this would be add more oil to the seasoning composition. There is no evidence in the file to show that the added oil in PAJ would substantially alter the emulsion of the claims. Appellant argues that PAJ teaches away from using more than 0.3 wt% emulsifier. This is disagreed with because page 5 appears to state just the opposite. Appellant urges that salt is not mentioned in PAJ but since this is for a stir-fried dish, one of ordinary skill in the art would expect that the stir-fry is liberally treated with soy sauce, a rich source of salt. Further salt is a suggested ingredient in paragraph 0012 of the translation. To add or subtract salt from a seasoning product would have been an

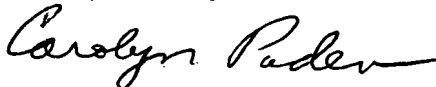
obvious way to modify the salt to taste. Appellant urges that the reference does not show the advantages of salt and lecithin in anti-spattering. This argument has been considered but is not persuasive because the claims, as written, do not require an anti-spattering feature.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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PRIMARY EXAMINER

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9-13-07

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